IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 944 of 1981

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NAI KANTILAL SHANKERLAL & 1 - Appellant(s)
Versus
PANCHAL PUSHPABEN B.DECEASED THRO'HER HEIRS & LRS.RESP.NO.2 & 3 - Defendant(s)

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Appearance :
MR MB FAROOQUI for Appellant(s) : 1 - 2.
MR VIKRAM THAKOR for Defendant(s) : 1 - 3.
MR RJ SHARMA for Defendant(s) : 2,
MR UDAY R BHATT for Defendant(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/08/2007

ORAL JUDGMENT

1. The owner and the driver of the truck, being aggrieved by the award dated 30th August, 1980 passed by the Motor Accident Claims Tribunal [Main] Banaskantha at Palanpur in MAC Petition No. 15 of 1979, have filed this appeal.

2. The short facts necessary for disposal of the present appeal are that on the fateful day, the deceased, husband of the claimant no.1 had started from Manpura on a motorcycle and went to Palanpur, but on the way, he was hit by the truck bearing registration no. MRL 2225. He died as a result of the injuries, therefore, a claim seeking compensation of Rs.2,37,000/- was filed by the widow and the two minor children. The driver and the owner appeared before the Tribunal and submitted that their truck was not involved in the accident. On the fateful day, the driver had gone to some other place and the truck was not involved in the accident. As the parties joined the issue, the learned Tribunal allowed the parties to lead evidence. After recoding the evidence and hearing the parties, the learned Tribunal allowed the claim to the extent of Rs. 86,500/- but restricted the liability of the Insurance Company to the extent of Rs. 50,000/- and directed that the balance amount be paid by the present appellants. The appellants are now before this Court.

3. Learned counsel for the appellants, after taking me through the evidence and the findings

recorded by the Tribunal submitted that statement of A.W. 1 Pushpaben in relation to the details of the truck being hearse, could not be relied upon, because Shantilal Nai who gave information about the truck to Pushpaben was not examined before the Tribunal. He also submitted that the statement of A.W. 4 Parbatji Ratuji and A.W.5 Virchandbhai Panabhai [Vira Panna] are not reliable. He submitted that there are material contradictions in the statements of the witnesses, therefore, the Claim Petition ought to have been dismissed.

4. Shri Vikaram Thakor, learned counsel for the respondents no. 1 to 3 submitted that the learned Tribunal was justified in relying upon the statements of the witnesses in view of the submissions made by Pushpaben that she had given an advertisement in the newspapers and in response to the said advertisement, some eye witnesses contacted her. He also submitted that the Tribunal was absolutely justified in relying upon the eye witness account of A.W. 4 Parbatji Ratuji and A.W. 5 Virchandbhai Panabhai. Shri U.R. Bhatt, learned counsel for the respondent no.4 did not say anything in view of the fact that the Insurance Company has not filed any appeal.

5. From the statement of A.W. 1 Pushpaben, it would clearly appear that she was given the details about the accident and the details of the truck by one Shantilal Nai; she had stated that Shantilal Nai had gone to Bombay and she did not have complete

address of the said Shantilal. True it is that her statement would be hearsay but the fact still would be that she gave details of the truck which were informed to her by Shantilal Nai. In absence of any other evidence to show that the truck was involved in the accident, simple statement of A.W. 1 Pushpaben could not have assumed importance because, such statement would not have been admissible in evidence. But in the present case, Pushpaben has further stated that she had issued advertisement in the newspaper and in response to that Parbatji Ratuji and Virchand Panabhai had met her. These two witnesses have been examined before the Tribunal. A.W. Parbatji Ratuji has clearly stated that he was a witness to the accident; after the accident, truck came near them; driver got down; went to the motorcyclist and thereafter he left the spot. According to him, the truck which caused the accident was bearing Registration No. MRL 2225. He also stated that he had seen A.W. no.2 Hiralal Panchal. Similar is the statement of A.W. 5 Virchandbhai Panabhai. He has deposed that he was going with Parbat for paying money to one Vaghari and on way they had seen the accident and involvement of truck No. MRL 2225 and after some time when they saw the advertisement in the newspaper, they met the party/lawyer. To controvert this evidence, driver of the truck has entered in the witness box and has stated that the truck was not involved in the accident. The driver Kantilal has stated that he had gone to take bridegroom procession of Ramji Magan at village

Ghodiyal and he started from Sidhpur and went to Chhapi and then went to Narasal, Chudi, Magarwada, Vadgam and Ghodiyal and he transported certain persons. A.W. Ramjibhai has supported the statement of the driver. However, taking into consideration the evidence available on the records, it is clear that the truck had reached to the place of the bridegroom at about 7.30 p.m. but the accident had taken place at about 6.30 p.m. If prior to the arrival of the driver at the place of bridegroom, the accident had taken place and witnesses show involvement of the truck in the accident, then, the finding certainly can be recorded against the interest of the driver and the owner.

6. After giving my thoughtful consideration to the evidence available on the records, findings recorded by the learned Tribunal with which I am in general agreement and for the reasons stated aforesaid, I am unable to hold that the Tribunal was unjustified in making the award.

7. I find no reason to interfere. The appeal deserves to and is accordingly dismissed. No costs.

[R.S. GARG, J.]

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